

CERTIFICATE OF SERVICE

I, Patricia Aunon, do hereby certify that a copy of the foregoing pleading was sent by first class United States mail, postage prepaid, this 30th day of November, 1993, to the following:

National Telecommunications &
Information Administration
U.S. Department of Commerce
Room 4713
14th & Constitution Ave., N.W.
Washington, D.C. 20230

Charles P. Featherstun
David G. Richards
Bellsouth Corporation
1133 21st Street, N.W.
Washington, D.C. 20036

John A. Prendergast
Blooston, Mordkofsky, Jackson
& Dickens
2120 L Street, N.W., #300
Washington, D.C. 20037

Richard S. Becker
James S. Finerfrock
Paul G. Madison
Becker & Madison, Chartered
1919 Eye Street, N.W.
Eighth Floor
Washington, D.C. 20006

Ellen S. Levine
Attorney for the Public
Utilities Commission of the
State of California
505 Van Ness Avenue
San Francisco, CA 94102

William J. Franklin, Esq.
1919 Pennsylvania Avenue, N.W.
Suite 300
Washington, D.C. 20006-3404

James U. Troup
Laura Montgomery
Arter & Hadden
1801 K Street, N.W.
Suite 400K
Washington, D.C. 20006

David L. Nace
Pamela L. Gist
Lukas, McGowan, Nace &
Gutierrez, Chartered
1819 H Street, N.W.
Seventh Floor
Washington, D.C. 20006

Gary M. Epstein
Nicholas W. Allard
James H. Barker
Latham & Watkins
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2505

Albert H. Kramer
David B. Jeppsen
Keck, Mahin & Cate
1201 New York Avenue, N.W.
Penthouse Suite
Washington, D.C. 20005

Jay C. Keithly
Leon M. Kestenbaum
1850 M Street, N.W., #1100
Washington, D.C. 20036

Larry Blosser
Donal J. Elardo
MCI Telecommunications Corp.
1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

David L. Jones
Rural Cellular Association
2120 L Street, N.W., #810
Washington, D.C. 20037

R. Gerard Saleme
Senior VP - Federal Affairs
McCaw Cellular Communications,
Inc.
1150 Connecticut Avenue, N.W.
4th Floor
Washington, D.C. 20036

Judith St. Ledger-Roty
James J. Freeman
Michael Wack
Reed, Smith, Shaw & McClay
1200 18th Street, N.W.
Washington, D.C. 20036

Robert S. Foosaner
Lawrence R. Krevor
Nextel Communications, Inc.
601 13th Street, N.W.
Suite 1100 South
Washington, D.C. 20005

Jonathan D. Blake
Kurt A. Wimmer
Covington & Burling
1201 Pennsylvania Avenue, N.W.
Post Office Box 7566
Washington, D.C. 20044

Gail L. Polivy
GTE
1850 M Street, N.W.
Suite 1200
Washington, D.C. 20036

Francine J. Berry
Steven R. Davis
Richard H. Rubin
AT&T
Room 3244J1
295 North Maple Avenue
Basking Ridge, NJ 07920

William D. Jimerson
Alliance Telcom, Inc.
34 Woodbine Road
Pittsford, NY 15534

David J. Kaufman
Lorretta K. Tobin
Brown Nietert & Kaufman,
Chartered
1920 N Street, N.W.
Suite 660
Washington, D.C. 20036

Carl W. Northrop
Bryan Cave
700 13th Street, N.W.
Suite 700
Washington, D.C. 20005

George Y. Wheeler
Koteen & Naftalin
1150 Connecticut Avenue, N.W.
Suite 1000
Washington, D.C. 20036

Sheila Slocum-Hollis
Metzger, Hollis, Gordon &
Mortimer
1275 K Street, N.W.
Suite 1000
Washington, D.C. 20005

Gustave Tappe
Vice President - Operations
Telepoint Personal
Communications, Inc.
405 Broad Avenue
Palisades Park, NJ 07650

Robert H. Kyle
Small Business PCS Association
96 Hillbrook Drive
Portola Valley, CA 94028

Robert Cook
Chairman & CEO
U.S. Intelco Networks, Inc.
P.O. Box 2909
Olympia, WA 98507

Stephen G. Kraskin
Sylvia L. Lesse
Charles D. Cosson
Kraskin & Associates
2120 L Street, N.W.
Suite 810
Washington, D.C. 20037



Patricia Aunon

PREFERENTIAL MEASURES SUPPORTED BY COOK INLET REGION, INC.

- Adoption of Small Business Administration Section 8(a) standards for socially and economically disadvantaged entities.
- 25-percent bidding credit for small disadvantaged entities and adoption of the Department of Defense Section 1207 minority preference program.
- Allow aggregation of 20 MHz and 10 MHz set-aside bands and combinatorial bidding for blocks set aside for designated entities.
- Reclassification of 20 MHz BTA set-aside block for MTA use to promote immediate viability and limit transaction costs for bidders.
- Allowance of tax certificates for the transfer of a spectrum-based license to a minority; license may be of auction or non-auction origin.
- Require up-front payment and a substantial deposit; payment and deposit will be forfeited if applicant is later found ineligible.
- Installment payment option to allow for interest payments for first two years with the remaining payments of interest and principal amortized over the remainder of the license term.
- Interest rate should be set at the government's cost of money and the rate should be fixed for the duration of the term.
- A five-to-ten year payment plan for designated entities should be adopted to discourage speculative bids.
- Two-year antitrafficking restriction for licenses won with designated entity preferences.



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PROPOSED FCC REGULATIONS

§ 1 Social Disadvantage

(a) *General.* Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because of their identities as members of groups without regard to their individual qualities. The social disadvantage must stem from circumstances beyond their control. For social disadvantage relating to Indian tribes and Alaska Native Corporations, see § 3(a).

(b) *Members of designated groups.* (1) In the absence of evidence to the contrary, the following individuals are presumed to be socially disadvantaged: African Americans; Hispanic Americans; American Indians/Alaska Natives; Asian Americans/Pacific Islanders [See *Statement of Policy on Minority Ownership of Broadcasting Facilities*, 68 FCC Rcd 979 (1978).]

(2) An individual seeking socially disadvantaged status as a member of a designated group may be required to demonstrate that he/she holds himself/herself out and is identified as a member of a designated group if the FCC has reason to question such individual's status as a group member.

(c) *Individuals not members of designated groups.* An individual who is not a member of one of the above-named groups must establish his/her individual social disadvantage on the basis of clear and convincing evidence. A clear and convincing case of social disadvantage must include the following elements:

(1) The individual's social disadvantage must stem from his or her color, ethnic origin, gender, physical handicap, long-term residence in an environment isolated from the mainstream of American society, or other similar cause not common to small business persons who are not socially disadvantaged.

(2) The individual must demonstrate that he or she has personally suffered social disadvantage, not merely claim membership in a non-designated group which could be considered socially disadvantaged.

(3) The individual's social disadvantage must be rooted in treatment which he or she has experienced in American society, not in other countries.

(4) The individual's social disadvantage must be chronic and substantial, not fleeting or insignificant.

(5) The individual's social disadvantage must have negatively impacted on his or her entry into and/or advancement in the business world. The FCC will entertain any relevant evidence in assessing this element of an applicant's case. The FCC will particularly consider and place emphasis on the following experiences of the individual, where relevant:

(i) *Education.* The FCC shall consider, as evidence of an individual's social disadvantage, denial of equal access to institutions of higher education; exclusion from social and professional association with students and teachers; denial of educational honors; social patterns or pressures which have discouraged the individual from pursuing a professional or business education; and other similar factors.

(ii) *Employment.* The FCC shall consider, as evidence of an individual's social disadvantage, discrimination in hiring; discrimination in promotions and other aspects of professional advancement; discrimination in pay and fringe benefits; discrimination in other terms and conditions of employment; retaliatory behavior by an employer; social patterns or pressures which have channelled the individual into nonprofessional or non-business fields; and other similar factors.

(iii) *Business history.* The FCC shall consider, as evidence of an individual's social disadvantage, unequal access to credit or capital; acquisition of credit or capital; acquisition of credit or capital under unfavorable circumstances; discrimination in receipt (award and/or bid) of government contracts; discrimination by potential clients; exclusion from business or professional organizations; and other similar factors which have impeded the individual's business development.

§ 2 Economic disadvantage.

(a) *Economically disadvantaged Individuals.* (1) Economically disadvantaged individuals are socially disadvantaged individuals or women whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially disadvantaged, and such diminished opportunities have precluded or are likely to preclude such individuals from successfully competing in the open market. In determining economic disadvantage the FCC may compare the applicant concern's business and financial profile with profiles of businesses in the same or similar line of business which are not owned and controlled by socially and economically disadvantaged individuals.

(2) This program is not intended to assist concerns owned and controlled by socially disadvantaged individuals or women who have accumulated substantial wealth, who have unlimited growth potential or who have not experienced or having overcome impediments to obtaining access to financing, markets and resources.

(3) For economic disadvantage as it relates to tribally-owned concerns, see § 3(a)(2).

(b) *Factors to be considered.* In determining the degree of diminished credit and capital opportunities of a socially disadvantaged individual or woman, the FCC will consider factors relating both to the applicant concern and to the individual(s) claiming disadvantaged status, including that individual's access to credit and capital; the

financial condition of the applicant concern; and the applicant concern's access to credit, capital and markets.

(1) *Personal financial condition of the individuals claiming disadvantaged status.* This criterion is designed to assess the relative degree of economic disadvantage of the individual as well as the individual's potential to capitalize or otherwise provide financial support for the business. The specific factors to be considered include but are not limited to: the individual's personal income for at least the past two years; total fair market value of all assets; and the individual's personal net worth. An individual whose personal net worth exceeds \$250,000 will not be considered economically disadvantaged.

(i)(A) Except as provided in paragraph (b)(1)(i)(B) of this section, when married, an individual upon whom eligibility is based shall submit a financial statement relating to his/her personal finances and a separate financial statement relating to his/her spouse's personal finances. A married applicant individual residing in any of the community property states or territories of the United States must clearly identify on his or her financial statement those assets which are his or her separate property and those which are community property. The spouse of such married applicant must similarly identify on his or her financial statement those assets which are his or her separate property and those which are community property. A one-half interest in the assets identified as community property (and income derived from such assets) will be attributed to the applicant individual for purposes of determining economic disadvantage. Assets or a community property interest in assets, which applicant spouse has transferred to a non-applicant spouse within 2 years of the date of the FCC application will be presumed to be the property of the applicant spouse for purposes of determining his/her personal net worth. However, such presumption shall not apply to any applicant spouse who is subject to a legal separation recognized by a court of competent jurisdiction. A financial statement of a spouse of an applicant is not required if the individual and his/her spouse are subject to a legal separation recognized by a court of competent jurisdiction. However, an applicant individual must include on his or her statement all community property in which he or she has an interest.

(B) Except for concerns where both spouses are individuals upon whom eligibility is based, the requirement of paragraph (b)(1)(i)(A) of this section, relating to the separate financial statements, applies only to determinations of economic disadvantage. For a concern where both spouses are individuals upon whom eligibility is based, the personal net worth of each spouse individually will be considered.

(2) *Business financial condition.* This criterion will be used to provide a financial picture of a firm at a specific point in time in comparison to other concerns in the same or similar line of business which are not owned and controlled by socially and economically disadvantaged individuals. In evaluating a concern's financial condition, the FCC's consideration will include, but not be limited to, the following factors: business assets, revenues, pre-tax profit, working capital and net worth of the concern, including the value of the investments in the concern held by the individual claiming disadvantaged status.

(3) *Access to credit and capital.* This criterion will be used to evaluate the ability of the applicant concern to obtain the external support necessary to operate a competitive business enterprise. In making the evaluation, the FCC shall consider the concern's access to credit and capital, including, but not limited to, the following factors: Access to long-term financing; equipment trade credit; access to raw materials and/or supplier trade credit; and bonding capability.

§ 3 Concerns owned by Indian tribes, including Alaska Native Corporations.

(a) *General.* Indian tribes are considered socially and economically disadvantaged for purposes of participation according to the following criteria:

(1) *Social disadvantage.* An Indian tribe meeting the definition set forth in § 4 shall be deemed socially disadvantaged.

(2) *Economic disadvantage.* With the exception of Alaska Native Corporations (see § 3(e)(2), the Indian tribe must demonstrate to the FCC that the tribe itself is economically disadvantaged. This shall involve the consideration of available data showing the tribe's economic condition, including but not limited to, the following information:

- (i) The number of tribal members.
- (ii) The present tribal unemployment rate.
- (iii) The per capita income of tribal members, excluding judgment awards.
- (iv) The percentage of the local Indian population below the poverty level.
- (v) The tribe's access to capital markets.

(vi) The tribal assets as disclosed in a current tribal financial statement. The statement should list all assets including those which are encumbered or held in trust, but the status of those encumbered or trust assets should be clearly delineated.

(vii) A list of all wholly or partially owned tribal enterprises or affiliates and the primary industry classification of each. The list must also specify the members of the tribe who manage or control such enterprises or serve as officers or directors.

(3) *Application process -- forms and documents required.* In order to establish tribal eligibility, the Indian tribe must submit the forms and documents required of applicants generally as well as the following material.

(i) A copy of the tribe's governing document(s) such as its constitution or business charter.

(ii) Evidence of its recognition as a tribe eligible for the special programs and services provided by the United States or by its state of residence.

(iii) Copies of its articles of incorporation and bylaws as filed with the organizing or chartering authority, or similar documents needed to establish and govern a non-corporate legal entity.

(iv) Documents or materials needed to show the tribe's economically disadvantaged status as described in paragraph (a)(2) of this section.

(b) *Legal business entity organized for profit and susceptible to suit.* The applicant or participating concern must be a separate and distinct legal entity organized or chartered by the tribe, or Federal or state authorities. The concern's articles of incorporation must contain express sovereign immunity waiver language, or a "sue and be sued" clause which designates United States Federal Courts to be among the courts of competent jurisdiction for all matters relating to the FCC's programs, including, but not limited to, loans, advance payments and contract performance. Also, the concern must be organized for profit, and the tribe must possess economic development powers in the tribe's governing documents.

(c) *Ownership.* For corporate entities, a tribe must own at least 51 percent of the voting stock and at least 51 percent of the aggregate of all classes of stock. For non-corporate entities, a tribe must own at least a 51 percent interest.

(d) *Control and management.* (i) Except for concerns owned by ANCs, the management and daily business operations of a tribally-owned concern must be controlled by an individual member(s) of an economically disadvantaged tribe. This paragraph does not preclude management of a tribally-owned concern by committees, teams, or Boards controlled by such individuals.

(e) *Individual eligibility limitation - (1) Concerns owned by Indian tribes except those owned by Alaska Native Corporations.* Requirements regarding management and daily business operations are met if a tribally-owned concern is controlled by one or more members of the economically disadvantaged Indian tribe.

(2) *Concerns owned by Alaska Native Corporations.* The Alaska Native Claims Settlement Act, as amended, provides that a concern which is majority owned by an Alaska Native Corporation shall be deemed to be controlled and managed by minority individuals and, pursuant to Pub. L. 102-415 § 10 (1992) (43 U.S.C. § 1626(e)), shall be deemed economically disadvantaged for purpose of participation in Federal programs. Therefore, the FCC will not examine the disadvantaged status of an individual involved in the management of daily business operations of an Alaska Native Corporation-owned concern.

§ 4 Definitions.

Alaska Native means a citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut blood, or a combination thereof. The term includes, in the absence of proof of a minimum blood quantum, any citizen who is regarded as an Alaska Native.

Alaska Native Corporation means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, et seq).

Indian tribe means any Indian tribe, band, nation, or other organized group or community of Indians, including any Alaska Native Corporation, as defined in this section, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or is recognized as such by the State in which such tribe, band, nation, group, or community resides. See, definition of "tribally-owned concern."



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EXECUTIVE SUMMARY

In order to assess the policy implications of General Docket 90-314, the FCC Small Business Advisory Committee (SBAC) held hearings in Washington, D.C. on May 27, 1993 and September 14, 1993. The Committee elicited testimony from industry leaders and other interested parties. Our findings and recommendations are summarized below.

Findings

- o Entry opportunities for small service providers have been constrained in existing telecommunications markets by undercapitalization, concentration of ownership, and other conditions contributing to the exclusion of businesses owned by minorities and women.
- o Capital formation is one of the major economic barriers to full participation by small and minority owned businesses.
- o The FCC can make these barriers surmountable through its crafting of interlinking policies which affect the amount of cash required based on (1) the amount of spectrum bid, and (2) the size of the licenses. Additional measures including bidding enhancements and tax expenditure finance assistance are appropriate regulatory tools to ensure that the public receives the best practical service from emerging PCS technologies, and to increase economic opportunities in the PCS field.

Recommendations

Regulatory Proposals

- o Service area designations and bandwidth assignments should attempt to remove significant impediments to entrepreneurial entry in the PCS field that could accompany a system of licensing based on competitive bidding.
 - Allocate a spectrum block for qualified small, female and minority businesses;
 - Allocate small spectrum blocks, e.g., 20 Mhz-25 Mhz per license;
 - Provide for multiple licenses in each geographic area.
 - Allow for an exemption to any proposed spectrum caps in a market where a joint venture exists with a small, female or minority business.
- o The Commission should encourage innovative and efficient service proposals by designing bidding methodologies, and supporting policies, to encourage entry opportunities and capital formation:
 - Use eligibility requirements for bidding designed to encourage equal employment opportunities, opportunities for minority and female vendors, and formation of strategic small business alliances with large LECs and cellular operators.
 - Allow applicants to certify financial qualifications based on "highly confident" letter and letters of intent from qualified investment banking firms, venture capital funds and Specialized Small Business Investment Companies.
 - Encourage strategic small business alliances generally by awarding "innovator's bidding credits" equal to 10% of an applicants bid.
 - Allow installment payments and royalty arrangements for qualified small, female and minority businesses.
 - Authorize distress sales to small business entities where winning bidders are ineligible, unqualified, unable to pay, or unable to complete construct requirements.

- Seek legislation establishing a communications capital fund from revenues generated by spectrum auctions.
- o The Commission should also authorize use of tax certificate and other financing techniques, in consultation with the SBA and the IRS, to encourage capital formation:
 - Fixed microwave licensees seeking tax certificates for relocation.
 - SBA licensed Specialized Small Business Investment Companies that furnish financial and technical assistance to small PCS licensees owned by members of minority groups, women and disadvantaged rural entities.
 - Owners and investors in minority owned and controlled PCS licensees.

Classification Standards

- o The criteria for small, female, and minority business standards should be consistent with the Small Business Administration's (SBA) current standards for small and minority business concerns applying for financial and or management assistance from Small Business Investment Companies (SBIC) under the SBIC program.
- o The Commission should request comment from the public, after consulting with the SBA, to determine complementary eligibility standards for PCS capital formation policies.
- o Minority and female controlled entities should be subject to anti-trafficking requirements, should maintain 51% equity and voting control from the initial grant through construction and operation of the PCS license.

MARKET OVERVIEW

Our review of existing radiotelephone industries confirmed that the universe of potential service providers is significantly constrained by increasing concentration of ownership and undercapitalization. In our view, the introduction of competitive bidding procedures is more likely to compound, rather than relax, these impediments to market entry.

Need for Economic Opportunity

Economic opportunities for rural telephone companies, omnibus businesses owned by members of minority groups and women are major policy objectives of the Budget Reconciliation Act of 1993.¹ The legislative history of the Act indicates that the House Committee on Energy and Commerce was generally concerned that "unless the Commission is sensitive to the need to maintain opportunities for small businesses, competitive bidding could result in a significant increase in concentration in the telecommunications industries." (emphasis added) Following the Committee's initial concerns with small business generally, concerns arose that specific provisions were needed to "ensure that businesses owned by members of minority groups and women are not in any way excluded." The House Report goes on to state that the "Committee anticipates that in some instances the Commission will act in a manner that is comparable to a mortgage banker, who designs new mortgage instruments in order to increase the universe of people who can afford to buy homes."² (emphasis added) Senate-sponsored amendments later reflected similar concerns with respect to rural telephone companies. Thus, the economic opportunity provisions invite reference to the distinct public interests in disseminating licenses among a wide variety of applicants in the future to avoid excessive concentration of ownership,³ and preempting exclusion of minorities and women from communications

1 Pub.-Law 103-66, Title VI, 107 stat. 312.

2 Id., at p. 9.

3 The District Court for the District of Columbia recognized that avoidance of concentration of ownership initially justified efforts to encourage small business growth in electronic publishing through line of business restrictions under the AT&T consent decree. United States v. AT&T, 552 F. Supp. 131, 183 (D.C.D.C. 1983). The Commission has also invoked the public interest in internodal competition and new and expanded telecommunications service to justify inclusionary ownership policies for satellite transponders and earth stations. World Communications, Inc. v. FCC, 735 F. 2d 1465, 1475 (D.C. Cir. 1984) (transponder sales) (1934 Act arms FCC with "elastic powers to accommodate dynamic new developments in the field of communications"); TRT Telecommunications v. FCC, 876 F. 2d 134 (D.C. Cir. 1989) (earth stations).

ownership.

Barriers To Market Entry

While uncertainty exists about the precise economic impact of the future PCS market structure, based on our findings, we are concerned that existing investment policies and practices, concentration of ownership, and undercapitalization, pose a serious risk that competitive bidding for spectrum will unduly burden, and in some cases foreclose, entry opportunities for small service providers.

Investment Trends

Although the precise economic impact of the future PCS marketplace is difficult to predict, it is widely accepted that the "primary obstacle to new entrants is lack of capital ..."⁴ According to a recent NTIA study, taxation of capital gains is a major contributor to the high cost of capital for U.S. telecommunications firms.⁵ The United States is the only major industrialized country that neither provides any capital gains tax relief or relief from double taxation of corporate profits. For this reason, some conclude that the internal revenue code "penalizes equity investment to a greater extent than any of our foreign rivals." The decline in capital available to small start-up firms following the passage of the 1986 Tax Reform Act, which raised capital gains tax rates by 40%, dramatically illustrates the adverse effect of current tax policy on small business investment. Between 1986 and 1991, the amount of venture capital made available to start new companies fell from \$4.19 billion to \$1.41 billion - a two thirds decline in financing for small business. During the same period, the number of start-up firms financed with venture capital dropped from 1,512 in 1986 to 792 in 1991.⁶

Debt financing practices among institutional lenders have also been cited as a cause of debt capital unavailability to small entities, including small FCC regulatees. Acquisition and operation of regulated communications facilities is extremely capital intensive. Without a track record of ownership

4 Statement of Barry Pineles, Assistant Chief Counsel for Market Competition Before the FCC Small Business Advisory Committee, May 27, 1993, p. 6.

5 U.S. Department of Commerce, Telecommunications in a Global Economy: Competitiveness at the Crossroads, Washington, D.C., (1990), p. 29.

6 McArdle, "Can Gov't Afford Cap Gains Hike?" Investor's Business Daily, July 22, 1993, p. 1, 2.

and substantial capital resources, new entrants typically encounter difficulties obtaining start-up funds. Lenders are frequently reluctant to finance loans, even when applicants have a track record, since FCC licenses cannot be used for collateral. Lenders also prefer to work with multiple-property owners.

Concentration of Ownership

Recent market trends in the existing radiotelephone industry suggest a trend toward concentration of ownership. SBA sales and employment data shows that a significant decline in the total number of firms in the radiotelephone industry coincided with declines in sales and employment shares among radiotelephone operators with less than 249 employees between 1989 and 1991. Of a total of 990 firms in SIC Code 481 in 1989, 971 firms with 249 employees or less possessed a 35.1 percent cumulative market share in 1991, compared to 927 firms in the same employment size range with a cumulative market share of 52.5 percent in 1989. In contrast, there were a total of 19 firms with over 249 employees commanding a 64.9 percent cumulative market share in 1991, compared to 21 firms of the same size range with a cumulative market share of 47.5 percent in 1989. SBA data on employment growth patterns shows that employment decreases due to firm "deaths" exceeded employment increases due to firm "births." We interpret data concerning firm "deaths" to mean that contraction among firms with less than 249 employees is due in part to attrition, and is not entirely explained by consolidation of ownership in the radiotelephone industry.

Racial and Gender Disadvantage

Women and members of minority groups have encountered special barriers to telecommunications ownership.⁷ At a time when women are becoming a major force in the world of small business generally, significant disparities between female ownership in telecommunications and the general economy persist. Between 1982 and 1987, the number of women owned proprietorships, partnerships, and Subchapter S corporations rose from 2,612,621 to 4,112,787, an increase of about 58% compared to a 26.2 percent increase among small businesses generally. In addition, total receipts of women owned businesses nearly tripled over this period -- rising from \$98.3 billion in

7 Letter of Hon. Larry Irving, Asst. Sec. for Communications and Information, to Hon. James H. Quello, Acting Chairman, FCC, September 14, 1993. ("We encourage the Commission to develop rules to implement competitive bidding for PCS that will provide greater opportunities for participation by groups currently underrepresented in telecommunications industries").

1982 to \$278.1 billion in 1987, compared to a 55% increase among small businesses as a whole during the same period. The Census Bureau's Survey of Women owned businesses showed that 30% of U.S. businesses were owned by women. The industry subgroup containing transportation, communications, and public utilities, however, accounted for only 1.9% of the women owned firms.⁸

The advocacy group American Women in Radio and Television suggests that lack of financing may account for the disparities between the percentage of communications businesses owned by women and the percentage of all businesses owned by women. "No existing FCC policy provides an incentive for women to enter the [communications] business. Nor are there any small business investment companies operating to assist women..."⁹ In view of the disparity between the statistical profile of businesses owned by women in telecommunications and the profile of women in other areas of the economy, we believe the lack of telecommunications-specific financial and technical assistance should be considered significant impediment to market entry.

Businesses owned by minorities also face special problems. A recent study by the U.S. Minority Business Development Agency found minority firms represent only 0.5 percent of all firms in SIC Code 4812 and 4813 combined.¹⁰ In that study, moreover, researchers found only 11 minority firms engaged in the delivery of cellular, specialized mobile radio, radio paging, or messaging services, while only 11 minority firms in SIC Code 5065 distribute cellular equipment.

The factors that have precluded minorities from effective participation in ownership of radio facilities involve access to finance, but are difficult to isolate or quantify. Dr. JoAnn Anderson, Director of NTIA's Minority Telecommunications Development Program, testified at our May hearing that there are often similarities between small businesses and minority businesses indicating that capital access is a problem for small businesses across the board, but "minorities will have additional

8 Letter of Melodie Virtue, Vice President Government relations, American Women in Television and Radio, August 6, 1993.

9 Comments of AWRT in MM Docket 91-140, pp. 2, 8 (citing The State of Small Business: A Report to the President, 1991).

10 Market Analysis of the Telecommunications Industry - Opportunities for Minority Businesses, U.S. Minority Business Development Agency: Washington, D.C. (1991)

problems."¹¹ One additional problem is that minorities frequently do not or cannot use traditional sources of financing, and that the most frequent source of capital is family savings and friends.¹² Another problem noted by the U.S. Senate is that spectrum for radio facilities was first allocated at a time when "undisguised discrimination in education, employment opportunities, and access to capital excluded minorities from all but token participation."¹³ Thus, through no fault of their own, minorities were impeded from competing successfully for licenses when they were first awarded and as they became available in the market due to systemic barriers to technical training and employment opportunities.¹⁴

Consequences of Spectrum Malapportionment

Burdens on small business entry poses a risk of spectrum malapportionment that could significantly limit the value of PCS spectrum to society as a whole. While companies of all sizes are potential contributors to innovation and efficiency, many technological advances in recent years have been introduced by small firms and new entrants. For instance, 55 percent of all technological innovations are attributable to firms with less than 500 employees.¹⁵ Studies have also shown that small firms innovate at a per person rate twice that of large firms, spend more on research and development, and translate research and development spending into new products more efficiently than large firms.¹⁶ In addition, "[s]mall businesses were responsible for 33.1 percent of employment and 45.7 percent of the growth in the communications sector from 1986-1988, and accounted for 90 percent of all new jobs created in fiscal year 1990."¹⁷ Nontechnical innovation and efficiency also

11 Statement of JoAnn Anderson, PhD. Before the FCC Small Business Advisory Committee, May 27, 1993.

12 Anderson, supra, note 8.

13 Brief of the U.S. Senate As Amicus Curiae in Metro Broadcasting, Inc. v. FCC, 110 S. Ct. 2997 (1990), p. 32, 33.

14 See, Telecommunications Minority Assistance Program, 1978 Pub. Papers 253 (President Carter).

15 "Characterizations of Innovations Introduced on the U.S. market in 1982," U.S. Small Business Administration.

16 Joint Petition for Further Rulemaking of Advanced Mobilecomm Technologies, Inc. and Digital Spread Spectrum Technologies, Inc., in Gen. Docket 90-314, Exhibit #3, pp. 12, 13.

17 Statement of PCS Action, Inc. Submitted to the FCC Small Business Advisory Committee, May 27, 1993, p. 1.

appears to vary with ownership and control factors. The Congressional Research Service found that, compared to stations with no minority ownership, most radio stations in which members of minority groups hold an interest provide services designed to meet the needs of a diverse array of consumer groups including women, children, senior citizens, and foreign language groups.¹⁸ Thus, underrepresentation or exclusion of applicants likely to introduce innovative and efficient service has direct implications for small businesses and residential consumers who seek expanded communications capabilities offered by PCS technologies.

Some have argued that the productivity and competitiveness of the nation's citizens and small businesses are severely limited by inferior telecommunications capabilities.¹⁹ Unlike large business users, small and medium sized users frequently lack in-house managers, advanced telecommunications equipment and service options, redundant telecommunications capabilities during disasters and outages, and the inability to collect proprietary information about calling patterns. Critics also allege that these inferior telecommunications capabilities are in part the result of certain tariff restrictions imposed by LECs, and other 'use' and 'user' restrictions, that arbitrarily prevent small businesses from establishing sharing arrangements to achieve volumes and economies of scale enjoyed by larger businesses. Residential communities also have specialized needs. Possible consumer uses for PCS include personal emergency situations, routine point-to-point communications,²⁰ transmission of medical data, and dissemination of news, information services, and educational materials. Rural populations may also benefit from use of PCS technologies for mobile emergency and activities, farming applications, and rural community hospitals and clinics.²¹ Based on available data, we believe a universe of service providers that utilizes small businesses is most likely to meet these specialized needs of small businesses and residential consumers effectively and efficiently.

DISCUSSION OF REGULATORY PROPOSALS

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- 18 CRS, Minority Broadcast Station Ownership and Broadcast Programming: Is there a Nexus? (June 29, 1988).
- 19 Gorosh, Steve, Small Business, Telecommunications, and Economic Development, California Western Law Review, Spring 1993.
- 20 Barrett and Marchant, Emerging Technologies and Personal Communications Services: Regulatory Issues, CommLaw Conspectus Vol. 1, p. 7.
- 21 CTIA White Paper #7: For Small Business, PCS is a Big Deal, September 8, 1993, p. 3.

Overview

One major challenge remaining before the Commission in Docket 90-314 is the task of implementing the economic opportunity provisions of the Budget Reconciliation Act. In this section of our report, we discuss specific proposals for implementing economic opportunity safeguards. In general, our recommendations seek to promote capital formation and entry opportunities through allocation of local spectrum blocks for small business applicants, size conscious bidding methodologies, and a PCS tax certificate program.

Prior to the passage of the Act in August, the Commission adopted a First Report and Order concerning eligibility criteria, service areas, and spectrum allocation for narrowband PCS, which represents an important first step in bringing PCS technologies to the marketplace. The First Report and Order²² will create 5,500 new licensing opportunities for national, regional, and local narrowband PCS providers, including licensing opportunities for small business at the local level, and ancillary marketing and equipment manufacturing opportunities. The Act opens the door to more pro-active steps along these lines by providing the Commission with explicit authority to promote economic opportunity.

Under the Act, the Commission has several means to promote the public interest in the use of spectrum and encourage economic opportunity, competition, and new and expanded telecommunications services. The overriding purpose of the Act is to improve licensing and spectrum allocation by authorizing competitive bidding procedures with safeguards to protect the public interest in the use of spectrum. The text of the Act plainly contemplates that safeguards in the form of small business ownership regulations that further economic opportunity. First, the Act directs the Commission to design competitive bidding procedures that will avoid excessive concentration of licenses and disseminate licenses among a wide variety of applicants. 47 U.S.C. 309(j)(3). The Act further directs the Commission to prescribe area designations and bandwidth assignments that promote economic opportunity for a wide variety of applicants. 47 U.S.C. 309(j)(4)(C). Finally, the Act directs the Commission to consider the use of tax certificates, bidding preferences, and other procedures to ensure that small businesses are given opportunities to participate in providing spectrum based services. 47 U.S.C. 309(j)(4)(D).

22 GEN. Docket No. 90-314 58 FR 42681 (August 11, 1993).

Service Areas and Bandwidth Assignments

Background

Our May hearing revealed several differing viewpoints on the way service area and bandwidth assignments might be used to promote small business participation. The Small Business PCS Association (SBPA) emphasizes that small businesses will be effectively excluded from all but the smallest service area being considered due to the capital intensive nature of PCS technology, and that even the Basic Trading Area "will be a large bite for small businesses to swallow in large metropolitan areas." SBPA's recommends two regional service areas and two BTA's spectrum blocks for small business eligibles. One of the small business BTA spectrum blocks would be awarded as a "Small Business Developer's License" to a qualifying small business experimental license holder who has put forth significant effort and investment in developing the service being licensed.²³

APC, an advocate of 40 MHz allocations, maintains that small spectrum blocks will delay deployment, cripple local licensees with high infrastructure costs, and deny economies of scale enjoyed by entrenched competitors.²⁴ According to APC, a better way to target programs for small and minority entrepreneurs is to provide an opportunity for PCS licensees to "franchise" portions of licensing areas to other entities. APC, like SBPA, also points out that a spectrum set-aside may also be a reasonable means to promote entry by small service providers. APC notes that several agencies of the federal government, such as the U.S. Forest Service, the Bureau of Land Management, and the Bureau of Indian Affairs, employ set-asides to foster small business participation in government auctions.²⁵

In a similar vein, MCI originally proposed in the PCS rulemaking that the FCC issue three national PCN licenses, by comparative hearings, to qualified consortia subject to ownership requirements to ensure local diversity; or alternatively, two national licenses with 40 MHz of spectrum

23 Letter of Robert H. Kyle, Chairman, Small Business PCS Association, August 7, 1993.

24 Statement of Gary L. Thomas, American Personal Communications, Inc., May 27, 1993.

25 American Personal Communications, Small Business and Minority Participation in the PCS Industry (August 1993).

and two local licenses with 20 MHz of spectrum. According to MCI, small, minority and female entrepreneurs would benefit from the significant opportunities this approach offers to participate in national consortia as local PCS operators.²⁶ We discuss these approaches below.

Discussion

Our basic premise is that the primary business opportunities the Commission should promote with service areas and bandwidth assignments are those that provide direct licensing opportunities for small service providers, and that mechanisms to encourage new entrants must be balanced with the larger objective of encouraging the best practicable service to the public. Based on these considerations, we have decided to support a regulatory structure with four to five service providers with 20-25 MHz of spectrum in small service areas of equal size, with one spectrum block for small business PCS applicants in the lower band.

Service Areas. In our view, a regulatory structure with many providers, and a large number of small service areas, is likely to promote competition, accelerate deployment, encourage diverse services, and promote economic opportunities. Small service areas permit parallel efforts to deploy PCS infrastructure. Small service areas could also have important benefits during the initial implementation of PCS when the market is still being defined. Accordingly, we support the use of local service areas based on Rand McNally Basic Trading Areas.

In order to ensure that small licensing areas will not be barrier to delivery of wide area services, the Commission should encourage existing standards-setting bodies to adopt a voluntary "Common Air Interface Standard" for handsets and base stations. The Commission could chose the standard by soliciting recommendations from the Telecommunications Industry Association (TIA), the Institute of Electrical and Electronic Engineers (IEEE), and the Advisory Group of Accredited Standards Committee (T1). We propose that each organization submit no more than two standards by April 1, 1994. The Commission could then publish and distribute the recommendations to facilitate consensus on standards issues among small businesses interested in participating in auctions.

Bandwidth Assignments. We recognize that debate over large vs. small spectrum blocks

26 Remarks of Steven Zecola, MCI, Inc., May 27, 1993.